SINGLE BENCH

(1) (4)

CF1062

# IN THE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTISGARH

**W.P.No. 7225 /2006**

**(Service Matter)**

**PETITIONER**: Ku. Malti Yadav, aged about 52 years D/o. Shri Roopchand Yadav Occupation- Upper Division Teacher, Mata Rukmani Sewa Sansthan, Kanya Aashram, Mutanpal, Distt. Bastar (C.G.)

P.R. No. 7330/06
Presented by Shri Basant Kanwar
dated 13/12/06

**VERSUS**

**RESPONDENTS** :1. State of Chhattisgarh Through : The Secretary, Schedule caste/Schedule Tribe & Backword Classes welfare department, D.K. Bhawan, Raipur (C.G.)

2. Collector, Trible Department, Distt. - Baster (C.G.)

3. Mata Rukhamani Seva Sansthan, Dhimarapal, Distt.-Baster (C.G.)

4. Secretary, Mata Rukhamani Seva Sansthan, Dhimarapal, Distt.-Baster (C.G.)

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OATH COMMISSIONER
APARNA MALVIYA
Bilaspur Chhattisgarh

(5)

(2)

**WRIT PETITION U/A 226 OF THE CONSTITUTION OF INDIA**

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(46)

**मामला क्रमांक** W.P. (S) No 7225/06 **सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|
| | 03.01.2007<br><br>Shri D.R. Sharma, Senior Counsel with Shri B.D. Badgaiyan, counsel for the petitioner(s).<br><br>Shri Sumesh Bajaj, Governemt Advocate for the respondents No. 1 and 2.<br><br>With the consent of learned counsel appearing for the parties, the writ petition is heard finally and disposed of.<br><br>Common order dictated in Writ Petition (S) No. 7222/2006 in open Court, passed separately.<br><br>A copy of this order be placed on the record of the connected writ petitions.<br><br>Sd/-<br>Satish K. Agnihotri<br>Judge | |

Subhash

P.T.O.

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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

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**Single Bench : Hon'ble Shri Satish Kumar Agnihotri, J.**

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**W.P.(S) No. 7222 of 2006**

**Petitioner** : Smt. Shashibala Gandhrala

Vs.

**Respondents** : State of Chhattisgarh & others

**W.P. (S) No. 7224 of 2006**

**Petitioner** : Smt. Ganga Nagesh

Vs.

**Respondents** : State of Chhattisgarh & others

**W.P. (S) No. 7225 of 2006**

**Petitioner** : Ku. Malti Yadav

Vs.

**Respondents** : State of Chhattisgarh & others

And

**W.P. (S) No. 7226 of 2006**

**Petitioner** : Smt. Kamlesh

Vs.

**Respondents** : State of Chhattisgarh & others

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**PRESENT**: -

Shri D.R. Sharma, Senior Counsel with Shri B.D. Badgaiyan, counsel for the petitioner(s).

Shri Sumesh Bajaj, Government Advocate for the respondents No. 1 and 2.

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**O R D E R**

**(Passed on 3rd day of January, 2007)**

According to the petitioners, the petitioners were appointed as Assistant Teachers/Upper Division Teachers in Mata Rukhamani Seva Sansthan, Dhimarapal, District-Baster

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(C.G.), which is a grant-in-aid institution. Learned counsel appearing for the petitioners submits that the State Government by the communication dated 6.6.1995 has instructed the Commissioner and Director, Trible Welfare Department, Bhopal to grant revised pay-scale to grant-in-aid institutions. Despite the said recommendation, the revised pay-scale was granted.

2. Being aggrieved, the petitioners have filed these writ petitions on 13-12-2006, after a period of more than 11 years seeking a direction to the respondents/State to grant revised pay-scale as per circular dated 6.6.1995 (Annexure P/2) with arrears and interest. It is not disputed that the petitioner has approached this Court after lapse of over 11 years without any justification or any explanation.

3. These petitions have been filed after a long inordinate and unexplained delay of over 11 years. The petitioner has not been able to produce or submit any reason for condonation of such a long delay in filing this petition.

4. It is well settled that High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic as the belated approach may have the effect of inflicting not only hardship as inconvenience but also injustice on third parties.

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5. The Supreme Court in **Jagdish Narain Maltiar Vs. The State of Bihar & others**[1] observed as under:

> "Thus it was in August, 1963 that the appellant discovered that his services were really determined for gross misconduct. For nearly 3 years thereafter he kept on submitting one memorandum after another to the Government and it was not until late in 1966 that he filed a Writ Petition in the High Court to challenge the order of removal. The memorials presented by him to the Government were in the nature of mercy petitions and he should have realized that in pursuing a remedy which was not duly appointed under the law he was putting in peril a right of high value and significance. By his conduct he disabled the High Court from exercising its extraordinary powers in his favour. We are therefore of the opinion that the High Court was justified in refusing to entertain the petition."

6. The Supreme Court in **P.S. Sadasivaswamy Vs. State of Tamil Nadu**[2] observed as under:

> "It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters."

7. The Supreme Court in **State of M.P. & others Vs. Nandlal Jaiswal and others**[3] further observed as under:

> "Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the

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[1] AIR 1973 SC 1343
[2] AIR 1974 SC 2271
[3] (1986) 4 SCC 566

(50)

> exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasized time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal."

8. The Supreme Court in **Burn Standard Co. Ltd. & others Vs. Dinabandhu Majumdar & another**[4] also observed as under:

> "The very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches."

[4] (1995) 4 SCC 172

9. The Supreme Court in **Karnataka Power Corporation Ltd. through its Chairman & Managing Director & another Vs. K. Thangappan & another**[5] observed as under:

> "Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prasad V. Chief Controller of Imports and Exports. Of course, the discretion has to be exercised judicially and reasonably."

10. In the present cases, the cause of action arose on 6.6.1995, when the communication was sent by the State Government to the authorities for grant of revised pay-scale. The petitioner has not taken any steps ever since till these petitions were filed in December, 2006 and remained tardy and indolent. This belated approach would certainly cause hardship and inconvenience to other side.

11. As a result, for the aforesaid reasons, the writ petitions are dismissed as not maintainable on the ground of delay in approaching this Court.

12. A copy of this order be placed on record in connected matters.

**Sd/-**
**Satish K. Agnihotri**
**Judge**

Subhash

[5] (2006) 4 SCC 322